

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MICHAEL OLSON,**

**Plaintiff,**

**v.**

**No. 15cv623 LAM**

**DOÑA ANA COUNTY et al.,**

**Defendants.**

**ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS**

**THIS MATTER** is before the Court on Plaintiff's *Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees* [Doc. 2], filed July 16, 2015 (hereinafter, "Motion").<sup>1</sup> For the reasons stated below, the Court will **GRANT** the Motion.

**1. Application to Proceed *in forma pauperis***

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of 28 U.S.C. § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case.

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<sup>1</sup> The Court construes Plaintiff's *Motion for Leave to Proceed on Appeal Without Prepaying Fees or Costs* as an application to proceed in District Court without prepaying fees or costs, because Plaintiff is proceeding *pro se* and his Motion, which is a District of New Mexico form, contains essentially the same information requested in the District of New Mexico's form titled "Application to Proceed in District Court Without Prepaying Fees or Costs."

*Menefee v. Werholtz*, Nos. 09-3186, 09-3202, 368 Fed. Appx. 879, 884, 2010 WL 716222 (10th Cir. March 3, 2010) (unpublished) (quoting *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962), internal brackets omitted). “[A]n application to proceed *in forma pauperis* should be evaluated in light of the applicant’s present financial status.” *Scherer v. Kansas*, No. 07-3084, 263 Fed. Appx. 667, 669, 2008 WL 313191 (10th Cir. Feb. 4, 2008) (unpublished) (citation omitted).

Plaintiff signed an affidavit in support of his Motion in which he declares under penalty of perjury (1) that he is unable to pay the costs of these proceedings, and (2) that the information in his Motion is true. [Doc. 2 at 2 and 9]. Plaintiff states that: (i) his total monthly income is \$1,096.00 in disability payments and food stamps; (ii) his total monthly expenses are \$1,145.00; (iii) he is unemployed; and (iv) his only asset is a vehicle valued at \$2,300.00. *Id.* at 2-7. The Court will grant Plaintiff’s Motion because Plaintiff is unemployed and his total monthly expenses exceed his total monthly income.

## **2. Service on Defendants**

Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*].” 28 U.S.C. § 1915(d). Rule 4 provides that:

At the plaintiff’s request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915.

Fed. R. Civ. P. 4(c)(3).

The Court is unable to serve process at this time because Plaintiff has not provided Defendants’ addresses. If Plaintiff files a motion for service of process which provides the Court with Defendants’ addresses, the Court will order service of process at that time.

**IT IS THEREFORE ORDERED** that Plaintiff's *Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees* [Doc. 2] is **GRANTED**. If Plaintiff would like the Court to order service of process on Defendants, Plaintiff may file a motion for service of process setting forth Defendants' addresses sufficient to accomplish service of process under any applicable state and federal rules.

**IT IS SO ORDERED.**

  
LOURDES A. MARTÍNEZ  
UNITED STATES MAGISTRATE JUDGE